



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0818]

RIN 1625-AA00

Safety Zone; Columbia River, Sand Island, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone for navigable waters of the Columbia River within a 500-yard radius of the small boat “Nessy,” while in the area of Sand Island, near Chinook, WA, and all involved associated vessels in support of Double-Crested Cormorant removal operations conducted by the U. S. Army Corps of Engineers and U.S. Department of Agriculture Wildlife Services. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Columbia River, or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 18 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2016-0818 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public

Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Mr. Kenneth Lawrenson, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503-240-9319, email msupdxwwm@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

The U. S. Army Corps of Engineers and U.S. Department of Agriculture Wildlife Services notified the Coast Guard that they intend to conduct federally permitted removal operations of the Double-Crested Cormorant starting September 21, 2016. This operation will involve the use of firearms and live ammunition. The Captain of the Port Sector Columbia River (COTP) has determined that potential hazards associated with the removal operations will be a safety concern for anyone within a 500-yard radius of the small boat “Nessy,” and all involved associated support vessel(s). The safety zone is needed to protect personnel and vessels in the navigable waters within the safety zone.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters before, during, and after the scheduled operations. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

### **III. Discussion of Proposed Rule**

The COTP proposes to establish a safety zone regulation from September 21, 2016, through October 21, 2016. The safety zone will cover all navigable waters of the Columbia River within 500 yards of the small boat “Nessy,” and all involved associated support vessels being used by personnel during the removal operation, conducted in the area encompassed by these points: 46° 15’ 45” N, 123° 59’ 39” W; 46° 15’ 24” N, 123° 59’ 42” W; 46° 13’ 32” N, 123° 57’ 18” W; 46° 15’ 9” N, 123° 55’ 24” W; and 46° 15’ 54” N, 123° 58’ 6” W. The 500 yard radius area of the safety zone is intended to protect persons and vessels from the dangerous combined effects of live gunfire, unpredictable animal behavior, and a highly dynamic marine environment characterized by strong tides, river currents and wind. This safety zone would be enforced only when the small boat “Nessy,” and all involved associated support vessels, are conducting the removal operations. The duration of the zone is intended to protect personnel, vessels, and activists wanting to protest the event in these navigable waters while the removal operations are being conducted. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

We learned of the need for the safety zone regulation we are proposing on August 11 2016. We have provided an 18-day comment period for this proposed rule. If after considering comments we decide to issue a temporary final rule, we would need to make that rule effective less than 30 days after publication and would state our good cause for doing so under 5 U.S.C. 553(d)(3).

### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these

statutes and Executive orders and we discuss First Amendment rights of protestors.

#### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone which would impact a small designated area of the Columbia River in the area encompassing these points: 46° 15’ 45” N, 123° 59’ 39” W; 46° 15’ 24” N, 123° 59’ 42” W; 46° 13’ 32” N, 123° 57’ 18” W; 46° 15’ 9” N, 123° 55’ 24” W; and 46° 15’ 54” N, 123° 58’ 6” W. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C.

605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of

government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment.

This proposed rule involves a safety zone lasting four weeks, for three days a week, that will prohibit entry within 500 yards of the small boat “Nessy” and all involved associated support vessels, while in the area encompassing these points: 46° 15’ 45” N, 123° 59’ 39” W; 46° 15’ 24” N, 123° 59’ 42” W; 46° 13’ 32” N, 123° 57’ 18” W; 46° 15’ 9” N, 123° 55’ 24” W; and 46° 15’ 54” N, 123° 58’ 6” W, while personnel are conducting the removal operations of the Double-Crested Cormorant. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.ID. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

#### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using

<http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

#### **PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T13-0818 to read as follows:

#### **§ 165.T13-0818 Safety Zone; Columbia River.**

(a) *Location.* The safety zone covered by this rule will cover all navigable waters of the Columbia River within 500 yards of the small boat “Nessy,” and all involved associated support



vessels, while in the area encompassing these points: 46° 15' 45" N, 123° 59' 39" W; 46° 15' 24" N, 123° 59' 42" W; 46° 13' 32" N, 123° 57' 18" W; 46° 15' 9" N, 123° 55' 24" W; and 46° 15' 54" N, 123° 58' 6" W.

(b) *Regulations.* In accordance with the general regulations in subpart C of this part, no person may enter or remain in the safety zone created in this section or bring, cause to be brought, or allow to remain in the safety zone created in this section any vehicle, vessel, or object unless authorized by the Captain of the Port or his designated representative.

(c) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or are not present in sufficient force to provide effective enforcement of this section, any Federal Law Enforcement Officer or Oregon Law Enforcement Officer or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 46 U.S.C. 70118. In addition, the Captain of the Port may be assisted by members of the U. S. Army Corps of Engineers and U.S. Department of Agriculture Wildlife Services onboard the small boat "Nessy," and other federal, state, or local agencies in enforcing this section.

(d) *Enforcement period.* This section is effective from September 21, 2016, through October 21, 2016. It will be enforced when the small boat “Nessy,” and all involved associated support vessels, are conducting the removal operations of the Double-Crested Cormorant. The small boat “Nessy” is described as a 20-foot black and gray aluminum work skiff with an overhead light arch. The Coast Guard will inform mariners of any change to this period of enforcement via Broadcast Notice to Mariners.

Dated: August 17, 2016

W. R. TIMMONS,  
Captain, U.S. Coast Guard,  
Captain of the Port,  
Sector Columbia River.

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